Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
@Communications, Inc.	)	CC Docket No. 02-4
Petition for Declaratory Ruling	)	
	)	

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc. ("SBC") submits these Reply Comments pursuant to the Public Notice (DA 02-164) released in this proceeding on January 18, 2002.

In order to fully evaluate the comments in this proceeding, it is important to understand what the issue is, and, equally important, what it is not. Despite much of the rhetoric by several commenters, the issue is ***not*** that Sprint (or any other ILEC) denies @Communications (or any other CLEC) the ability to interconnect at any technically feasible point as required by 47 U.S.C. § 251(c)(2)(B), including a single point in a LATA. Sprint specifically says that it allows interconnection at a single point in a LATA. *See Sprint Opposition* at 6.[1] Rather, the real issue concerns responsibility for the ***financial consequences*** of a CLEC's decision to interconnect at a particular point (or

---

[1] Similarly, SBC allows interconnection at a single point in a LATA. *See, e.g.,* Memorandum Opinion and Order, *In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Arkansas and Missouri*, CC Docket No. 01-194, FCC 01-337 at ¶ 88 (Nov. 16, 2001).

points).[2] @Communications, AT&T, Cablevision Lightpath, Level 3, PacWest Telecomm, and US LEC assert that they should not be responsible for the additional costs they impose as a result of their decisions to interconnect at a specific point (or points) in a LATA. The Commission should reject their assertions.

The question of CLEC financial responsibility arises each time an ILEC customer calls a CLEC customer in the same ILEC local calling area, but the ILEC has to haul its call outside the originating local calling area to get to the point of interconnection. In those instances, solely because of where the CLEC has chosen to interconnect, the ILEC is forced to haul its traffic out of the local calling area in which its calls originate and terminate. Indeed, depending on the locations of the calling areas in question, the point (or points) of interconnection chosen by a CLEC could require an ILEC to transport calls hundreds of miles beyond the local calling areas in which its calls originate and terminate.[3] The Commission should affirm that its current rules do not require ILECs to pay for the cost of transporting calls outside the local calling areas in which those calls originate.

As AT&T says, the interconnection of networks creates costs. *AT&T Comments* at 7. And, if a CLEC chooses to interconnect at a single point in a LATA, the costs of transporting certain calls will be greater than if the CLEC had elected to interconnect at multiple points of interconnection. There is no dispute that those transport costs must be

[2] *See @Communications Petition* at iii (the disputed issue is one of "cost responsibility").

[3] Moreover, under the CLEC position in this case, if an ILEC is able to carry traffic across LATA boundaries, a CLEC need not even have a point of interconnection in every LATA and could very well force an ILEC to transport traffic thousands of miles to a point of interconnection.

borne by *someone*. The CLECs, rallying under the banner of efficient network design,[4] would require ILECs to shoulder the burden of those costs. This proceeding, however, is not about efficient network design. This proceeding is about the cost consequences of CLEC network design choices. The CLECs are free to design their networks however they choose, including designating a single point of interconnection in a LATA, but there is nothing in the Act or the Commission's rules that entitles CLECs to pass on the costs of their network design choices to the ILECs.

Moreover, requiring CLECs to pay for those increased transport costs associated with a single point of interconnection is not a "penalty." *Cablevision Lightpath Comments* at 1-2, 5. Nor does it force CLECs to "mirror" or "replicate" the ILECs' networks. *Id.* at 2, 10. It simply reflects the reality of the trade-off between switching and transport costs. By choosing to deploy fewer switches in a LATA, a CLEC avoids the cost of additional switches and associated costs, such as collocation. Therefore, it is only fair that a CLEC should pay for the additional transport costs associated with that choice. It also is more efficient. A CLEC will arrive at the efficient interconnection point decision only if it is required to consider ***all*** of the costs associated with that decision.

Moreover, those additional costs are not recovered in SBC's local rates, as Pac-West and US LEC imply.[5] SBC's local calling rates were never designed for the possibility that a local call might traverse multiple local calling areas and incur hundreds of miles of transport costs before being terminated in the same local calling area in which

---

[4] *See, e.g., AT&T Comments* at 4-5; *Cablevision Lightpath Comments* at 9; *Pac-West and US LEC Comments* at 3-4.

[5] *Pac-West and US LEC Comments* at 6.

the call originated.[6] Indeed, the fact that those costs are not reflected in SBC's local rates is the gravamen of this issue, and is also a common theme running through recent Commission decisions addressing charges for originating and non-originating traffic.[7]

The Commission's *TSR Wireless*, *Texcom*, and *Mountain Communications* decisions, and the Commission rule underlying those decisions (47 C.F.R. § 51.703(b)), are grounded in the assumption that a LEC recovers from its own customers the cost of originating telecommunications traffic.[8] For many calls, that assumption is accurate and the rule is appropriate.[9] That assumption, however, is simply not true when, as a result of the point (or points) of interconnection chosen by a CLEC, an ILEC is forced to haul traffic beyond the local calling area in which a call originates and terminates.

It defies reason and common sense to suggest that CLECs should not pay for any additional transport costs incurred as a result of their decision to have a single point of

---

[6] There is no issue when the CLEC point of interconnection is in the same ILEC local calling area in which a call originates and terminates. In that instance, the cost of the transport to reach the CLEC point of interconnection is generally accounted for in the local rates of the ILEC customer who originates the call (although it may very well be that those rates are set below the cost of providing local service).

[7] *Qwest Corp. v. F.C.C.*, 252 F.3d 462, 468 (D.C. Cir. 2001)(in upholding the Commission's *TSR Wireless* decision, the D.C. Circuit noted that the "Commission's order simply requires the LECs to look to their own customers to recoup the needed costs of their facilities."), *rhrng. and rhrng. en. banc. den.* (2001); *Texcom, Inc. v. Bell Atlantic Corp.*, FCC 01-347 at ¶ 6 (Nov. 28, 2001)("Thus, through reciprocal compensation payments, the cost of delivering LEC-originated traffic is borne by the persons responsible for those calls, the LEC's customers."); *Mountain Communications, Inc. v. Qwest Communications Int'l, Inc.*, DA 02-250 at ¶ 13 (Feb. 4, 2002)("Qwest points out that, for those calls made by its end users in local calling areas outside the local calling area where Mountain's interconnection point resides, Qwest would ordinarily assess toll charges to those end users, pursuant to Qwest's General Exchange tariff in Colorado.")

[8] *See Texcom* at ¶ 6.

[9] *See* n. 6, *supra*.

interconnection (or even select multiple points of interconnection). A ruling that ILECs must shoulder those costs would be unjust and unreasonable, and would thus violate 47 U.S.C. § 251(c)(2)(D). The Commission should, therefore, affirm that its current rules (*e.g.,* 47 C.F.R. §§ 51.701, 51.703 and 51.709) do not require ILECs to pay the cost of hauling traffic beyond the boundaries of originating local calling areas to distant points of interconnection chosen by CLECs.

@Communications and the other CLEC commenters are incorrect in their assertion that the Commission has already determined that its rules force ILECs to incur the cost of hauling their traffic to distant local calling areas in which CLECs have established points of interconnection. To the contrary, in the *Intercarrier Compensation* Notice of Proposed Rulemaking, the Commission specifically said that application of its rules "has led to ***questions*** concerning which carrier should bear the cost of transport to the POI."[10] The Commission has not yet answered those questions, and it certainly has not answered them in the manner suggested by @Communications and the other CLECs.[11]

---

[10] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, FCC 01-132 ¶ 112 (April 27, 2001) ("Intercarrier Compensation Notice").

[11] At bottom, all CLECs base their arguments on 47 C.F.R. § 51.703(b). *See, e.g.,* AT&T Comments at 5-6; Cablevision Lightpath Comments at 5-7. In its *KS/OK 271 Order* and its *Intercarrier Compensation Notice*, the Commission did agree that the single sentence of that rule says what it says. Memorandum Opinion and Order, *In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, FCC 01-29 ¶ 235 (Jan. 22, 2001); *Intercarrier Compensation Notice* ¶ 112. However, the Commission has never said that the rule ***means*** that an ILEC must pay for the transport necessary to reach a CLEC point of interconnection in a distant local calling area, and, as discussed below, the Commission has more recently said it specifically ***does not mean*** that.

In its original *Local Competition Order,* in which the rules in question were adopted, the Commission very specifically said that a CLEC that requests "'technically feasible' but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the cost of that interconnection, including a reasonable profit."[12] The Commission also noted that "competing carriers must usually compensate incumbent LECs for the additional costs incurred by providing interconnection."[13] Most recently, in its Verizon Pennsylvania § 271 Order, the Commission specifically rejected the position advanced by the CLECs in this proceeding.[14] Faced with this very same issue, the Commission determined:

> The issue of allocation of financial responsibility for interconnection facilities is an open issue in our *Intercarrier Compensation NPRM*. We find, therefore, that Verizon complies with the clear requirement of our rules, i.e., that incumbent LECs provide for a single *physical* point of interconnection per LATA. Because the issue is open in our *Intercarrier Compensation NPRM*, ***we cannot find that Verizon's policies in regard to the financial responsibility for interconnection facilities fail to comply with its obligations under the Act***.[15]

By approving Verizon's request to provide in-region interLATA services in Pennsylvania, the Commission found that there is ***no*** requirement under its current rules

---

[12] First Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Radio Service Providers,* CC Docket Nos. 96-98, 95-185, FCC 96-325 ¶ 199 (Aug. 8, 1996)("Local Competition Order").

[13] *Id.* at ¶ 209.

[14] Memorandum Opinion and Order, *In the Matter of Application of Verizon Pennsylvania, Inc. Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138, FCC 01-269 (Sept. 19, 2001)("Verizon PA § 271 Order").

[15] *Verizon PA § 271 Order* at ¶ 100 (emphasis added).

or the Act for an ILEC to bear the cost of hauling traffic to CLEC points of interconnection outside the local calling areas in which calls originate and terminate. As the Commission itself has thus determined, current Commission rules do not impose upon ILECs the transport obligations that @Communications and the other CLECs believe they do.[16]

The lack of any such obligation in current Commission rules is supported by decisions from the only courts to have addressed the specific financial responsibility issue raised by @Communications.[17] In *U.S. West v. Jennings*, 46 F.Supp.2d 1004, 1021 (D. Ariz. 1999), the court held that the decision whether to require multiple points of interconnection should be left to each state, subject to the Act and FCC rules. Moreover, in allowing a CLEC to choose a single point of interconnection, the court also specifically determined that the Arizona Corporation Commission could "require a CLEC to compensate U.S. West for costs resulting from an inefficient interconnection." *Id.*

The United States Court of Appeals for the Third Circuit reached a similar conclusion in *MCI Telecommunications Corp. v. Bell-Atlantic Pennsylvania*, 271 F.3d 491 (3rd Cir. 2001). There, the Third Circuit found that CLECs (in that case, Worldcom) are entitled to choose where to interconnect, including at a single point in a LATA. *Id*. at

---

[16] As discussed above, ILECs do not recover in their local rates the cost of this additional transport. Thus, If the Commission reverses course and changes its interpretation of its rules, the Commission also would have to provide a means for ILECs to recover the cost of transporting calls beyond the local calling areas in which they originate.

[17] AT&T relies upon several decisions addressing the issue of allowing a single point of interconnection in a LATA. *See AT&T Comments* at 3-4. As discussed above, however, the issue in this proceeding is ***not*** whether a CLEC may choose only a single point of interconnection in a LATA. The issue is whether the CLEC who does so is financially responsible for hauling traffic from originating local calling areas to the distant point of interconnection chosen by the CLEC. In short, the issue is whether a CLEC may avoid the financial consequences of its chosen point (or points) of interconnection.

518. However, as with the court in *Jennings*, the Third Circuit also instructed, "To the extent, however that Worldcom's decision on interconnection points may prove more expensive to Verizon, the PUC should consider shifting costs to Worldcom." *Id.* In reaching this conclusion, moreover, the court specifically relied on paragraph 209 of the Commission's *Local Competition Order*. Consistent with these decisions and with the Commission's own pronouncements, SBC requests that the Commission affirm in this proceeding that the Commission's rules do not require ILECs to transport traffic beyond the local calling areas in which that traffic originates.

CONCLUSION

For the foregoing reasons, SBC requests that the Commission deny the Petition of @Communications and affirm that current Commission rules do not require ILECs to shoulder the cost of transporting originating traffic to points of interconnection beyond the local calling areas in which that traffic originates.

Respectfully submitted,

/s/ Jim Lamoureux
Jim Lamoureux
Gary L. Phillips
Paul K. Mancini

SBC COMMUNICATIONS INC.
1401 Eye Street, N.W., Suite 400
Washington, D.C. 20005
(202) 326-8895 – Voice
(202) 408-8745 – Facsimile

March 6, 2002